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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/740,209	12/18/2003	Michael R. McGovern	86746CEB	2120

7590 10/06/2005
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/740,209	Applicant(s) MCGOVERN ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/19/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/740,191 (US 2005/0135801). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been readily obvious to one skilled in the art to employ the presently claimed light shielding enclosure in a photographic film cartridge, such as that described in the copending application, since the present invention has the same utility.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

3. Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 6 does not further limit the scope of the invention since the recitation that the substrate comprises a fibrous material or a non-fibrous material encompasses any and all materials. In other words, by positively claiming a material and then negatively claiming said material, any known material is within the scope of the claim, which does not further limit the scope.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 6 is rejected for the lack of antecedent basis for the term "said substrate." Claim 6 depends from claim 2, but the substrate is not recited until claim 5. Claim 7 is similarly rejected.

7. Claim 8 is rejected for the lack of antecedent basis for the term "said housing."

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-8 are rejected under 35 USC 102(b) as being anticipated by US 4,568,590 issued to Iwai.

Applicant claims a light shielding enclosure containing the following:

- a. a body portion for enclosing a light sensitive product,
- b. an exit slot formed in said body portion for accessing said product,
- c. opposing light lock members on said exit slot,
- d. closely spaced flocked pile material configured for resisting light penetration into said enclosure located on each of said light lock members.

The flocked material, which is impervious to light, is preferably dyed and has pile of uniform length and denier. The flocked material is adhered to a substrate that is fixedly arranged (e.g., bonded) in said exit slot. Said substrate comprises a fibrous material, a non-fibrous material, a metallic material, a polymeric material, a ceramic material, or a vitreous material. The light lock members are adhesively bonded to the housing (i.e., body portion or exit slot).

Iwai teaches photographic film containers containing a teremp cloth (i.e., a light-shielding fabric located at the exit slot of said film container) are well known (col. 1, lines 5-15). Said teremp cloth is dyed black so as to shield light from said film (col. 1, lines 16-17). Known teremp cloths include woven fabrics and flocked fabrics (col. 1, lines 21-30), while Iwai's

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inventive cloth is a knit fabric (col. 1, lines 56-67). The flocked teremp cloth comprises pile flock fibers embedded in an adhesive coated onto a substrate (col. 2, lines 33-39). Specifically, a conventional flocked teremp cloth comprises a rayon cloth substrate with 75 denier rayon fibers as flocked pile (col. 3, lines 26-28). Said flocked teremp cloth is bonded to the film cartridge's exit slots (col. 3, lines 29-30). Figure 3, shows the flocked pile teremp cloth having a substantially uniform pile length. Thus, claims 1-8 are anticipated by the cited Iwai patent.

Conclusion

10. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. US 4,787,506 issued to Akao, US 5,246,521 issued to Shimura et al., and US 5,271,983 issued to Ise et al. teach flocked teremp cloths for film cartridges are known in the art.

B. JP 54-036924 and JP 54-036925 disclose flocked teremp cloths.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
October 1, 2005